UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE A2P SMS ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: All Actions	MASTER FILE: 12 CV 2656 (AJN)

MEMORANDUM OF LAW OF DEFENDANT CTIA – THE WIRELESS ASSOCATION IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION

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Defendant CTIA – The Wireless Association ("CTIA") respectfully submits this Memorandum in support of its Motion to Compel Arbitration, pursuant to Section 3 of the Federal Arbitration Act ("FAA"), and its request that this litigation be stayed or dismissed in consideration of Plaintiffs' obligation to arbitrate their disputes with CTIA.[1]

I. PRELIMINARY STATEMENT

Conspicuously absent from Plaintiffs' Second Consolidated Amended Class Action Complaint ("Complaint" or "SAC") is any mention of the arbitration clause in the agreement into which each Plaintiff entered with CTIA and its agent Neustar, Inc. ("Neustar") in order to lease each of the "common short codes" ("CSCs") at issue in this case. That agreement, the Common Short Code Registrant Sublicense Agreement ("CSC Agreement"),[2] provides for arbitration on an individual basis, and governed by American Arbitration Association ("AAA") rules, of "[a]ny dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination, non-renewal of this Agreement or any CSC, refusal to grant new CSCs, or the validity of this Agreement[.]" CSC Agreement ¶ 19.

Plaintiffs' claims here – in short, that CTIA and the other Defendants allegedly conspired to restrain trade or to monopolize a text messaging market through "guidelines and rules" concerning CSCs, *see* SAC ¶ 7 – plainly "aris[e] out of or relat[e] to" the CSC Agreement or its "validity." Indeed, the CSC Agreement either contains or authorizes the prices and terms for the

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1 Contemporaneously with this motion and in accord with the Court's Order concerning scheduling, CTIA also has joined in Defendants' Joint Motion to Dismiss Plaintiffs' Second Consolidated Amended Class Action Complaint, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. CTIA in no way waives its right to compel arbitration by that filing.

2 A copy of the current CSC Agreement, revised as of June 2009 and applicable in its terms to all of the Plaintiffs, is annexed as Exhibit A to the Declaration of Jeff Simmons ("Simmons Decl.") submitted with this Motion.

CSC leases that form the entire legal predicate for Plaintiffs' antitrust claims against CTIA, non-party alleged "co-conspirator" Neustar, and the remaining Defendants.[3] As this Court has recognized, the "arising out of or relating to" type language is "the paradigm of a broad clause." *Alghanim v. Alghanim*, 828 F. Supp. 2d 636, 652 (S.D.N.Y. 2011). Further, the Federal Arbitration Act, 9 U.S.C. §§ 1-16, "establishes that, as a matter of federal law, any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration[.]" *Moses H. Cone Mem'l Hosp. v. Mercury Contsr. Corp.*, 460 U.S. 1, 25 (1983). This Court should enforce Plaintiffs' obligations and CTIA's arbitration rights under that provision.

Because the CSC Agreement is silent as to any class or collective treatment of claims, it must be interpreted to authorize only individual arbitration. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758, 1775 (2010). That is especially so because the CSC Agreement expressly requires the arbitrator to apply Virginia law and procedures (*see* CSC Agreement ¶ 21), which do not recognize class actions of any kind. For these reasons, this case should be stayed under Section 3 of the FAA, 9 U.S.C. § 3, and the Plaintiffs should be compelled to engage in individual arbitration with CTIA.[4]

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3 The other Defendants are wireless communications carriers ("Carrier Defendants"), message aggregators ("Aggregator Defendants"), and WMC Global, Inc. ("WMC"), which performs certain message content auditing functions.

4 For the reasons explained herein, this clause prohibits class treatment of claims every bit as much as the one involved in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1751 (2011). The Second Circuit recognized a possible defense to a motion to compel arbitration on an individual basis in *In re American Express Merchants' Litigation*, 667 F.3d 204, *reh'g den.*, 681 F.3d 139 (2d Cir. 2012) ("*Amex III*"). Under *Amex III*, Plaintiffs bear the burden of making a significant and detailed evidentiary showing that the cost of proving their antitrust claims so far exceeds their potential damages as to make it unrealistic for them to vindicate those claims on an individual basis in arbitration. If Plaintiffs invoke *Amex III*, CTIA stands ready to refute Plaintiffs' showing regarding the costs and potential value of their claims. Moreover, a petition for certiorari was filed at the Supreme Court on July 30, 2012. The possibility of further review is substantial, given the number and fervency of the dissents and the division in the Circuits identified by the dissents. *See In re American Express Merchants' Litigation*, 681 F.3d 139, 143

II. BACKGROUND

A. Common Short Code Use and Administration

Text messages or short message service ("SMS") are short messages transmitted over wireless networks to cellular telephones and other wireless devices. SAC ¶ 2. Text messages are generally person-to-person communications using a ten-digit telephone number. By contrast, a CSC is a five- or six-digit number offered to mobile marketers that may be deployed for all manner of promotions and marketing activities. CSCs provide the capability for mobile marketers to reach vast numbers of mobile wireless subscribers across all carriers' networks and to communicate with those subscribers on a two-way basis.

The CSC Agreement is at the heart of this system. As the CSC Agreement makes plain, various players in the CSC ecosystem work together to deliver CSCs to the wireless end user. These players include:

- content providers, which "own[] or ha[ve] the right to content transmitted or distributed" via CSCs, CSC Agreement (Simmons Decl. Ex. A) ¶ 1;
- aggregators, which provide connectivity to wireless carriers' networks for CSC campaigns, *id.*;
- wireless carriers, which provide the network infrastructure, *id.* ¶¶ 1-2;
- CTIA, the CSC Administrator, which oversees the CSC Registry and monitors compliance with both the CSC Agreement and the CTIA Acceptable Use Policy, *id.* ¶¶ 5, 8;

(2d Cir. 2012) (Jacobs, C.J., dissenting from the denial of rehearing *en banc*); *see also id.* at 149 (Cabranes, J., dissenting from the denial of rehearing in banc); *id.* (Raggi, J., dissenting from the denial of rehearing en banc). In any event, CTIA agrees with the *en banc* dissenters that *Amex III* was wrongly decided and should be overruled and, accordingly, preserves this issue for appeal.

- Neustar, a neutral entity[5] that is CTIA's agent and licensee for operation of the CSC Registry and which "administers a method for assignment of CSCs[,]" *id.* ¶ 2; and
- various agents and subcontractors of CTIA that assist in enforcement of the CSC Agreement, *id.* ¶ 5, including WMC.

B. Plaintiffs' Allegations

Plaintiffs filed a putative class action seeking treble damages, injunctive relief, attorneys' fees, and other available relief against Defendants for claimed violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. SAC ¶ 1. In particular, Plaintiffs allege that Defendants conspired to "set up a system in 2003 under which persons transmitting" A2P text messages would be required to use CSCs and would not be permitted to send an A2P text message from a ten-digit telephone number. *Id.* ¶ 6. Plaintiffs allege that the Carrier Defendants, through Defendant CTIA, the wireless industry's trade association, issued guidelines and rules calling for the use of CSCs to transmit A2P text messages and prohibiting the use of ten-digit numbers for that purpose. *Id.* Plaintiffs further allege that Carrier Defendants, again acting through CTIA, established Neustar as the only entity authorized to lease CSCs to interested parties, *id.* ¶ 8.

The SAC alleges an antitrust conspiracy, and the CSC Agreement—which the SAC describes as the "lease" (*see* SAC ¶¶ 73-83)— lies at the heart of the alleged conspiracy. *See id.* ¶¶ 56, 73. Neustar is not named as a Defendant in this action, but it is denominated an alleged "co-conspirator" in the SAC. *Id.* ¶ 45. The SAC alleges that "Neustar has conspired with Defendants (i) to require CSC Lessees to acquire CSC leases and (ii) to fix or coordinate prices for CSC Lessees." *Id.* Every one of the Plaintiffs had to enter into a CSC Agreement with Neustar and CTIA in order to lease (and thus use) short codes – and every one of them did, accepting its terms, including the same terms of the arbitration provision in paragraph 19 quoted herein. *See* Simmons Decl. ¶¶ 4, 11-13.

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[5] Neustar is particularly well-suited to serve as the CSC registry operator because of its involvement in telephone numbering administration and portability functions which, by FCC rule, *see* 47 C.F.R. §§ 52.12(a), 52.13, demand neutrality and impartiality.

Notably, the CSC Agreement is so central to Plaintiffs' claims that Plaintiffs identify themselves as "CSC Lessees" throughout the SAC and describe themselves as "CSC Lessees who transmit large volumes of A2P SMS," and purport to represent "a class of CSC Lessees." *Id*. ¶¶ 13-14. Indeed, Plaintiffs allege in the SAC that being required to enter into a CSC Agreement with Defendant CTIA and Neustar is an allegedly unlawful precondition to leasing short codes. *Id.* ¶¶ 8, 45-46, 56, 73. *See* CSC Agreement (Introduction).

The CSC Agreement establishes the entire structure of the short code market. *See supra* pp. 3-4. It sets forth the terms, conditions, and policies applicable to CSC Lessees with which Plaintiffs take issue in the SAC, including the agreement to abide by CTIA's "Acceptable Use Policy" ("AUP"). CSC Agreement ¶ 5. The CSC Agreement and the AUP alike contemplate that CSC Lessees will enter into additional agreements, and have relationships with wireless carriers and others in order to utilize their CSCs. Under the CSC Agreement, CSC Lessees must agree to additional terms and conditions imposed on CSC use by Carriers and other entities and obtain approval from Carriers to activate a CSC. CSC Agreement ¶ 7. The CSC Agreement also establishes that Lessees' ability to utilize their CSCs may be restricted by Carriers for violation of the CSC Agreement and the AUP. *Id.* ¶ 3, 5, 7.b. It is the CSC Agreement that makes short codes non-transferable. *Id.* ¶ 7.h; *compare* SAC ¶ 79. Finally, the CSC Agreement identifies the role played by the Aggregators that makes possible CSC use by "provid[ing] connectivity from wireless carriers' subscribers for the purpose of connecting CSC campaigns." CSC Agreement ¶ 1.

Plaintiffs have also alleged that Carrier Defendants agreed to prohibit users of CSCs from sending A2P text messages directly to the Carrier Defendants, instead requiring these users to send the messages to one or more Aggregator Defendants. SAC ¶ 9. Plaintiffs allege that the Carrier Defendants entered into agreements with the Aggregators to control the per-message price, block all A2P text messages from ten-digit numbers, and charge CSC Lessees purportedly unnecessary program review fees, *id.*, all of which is provided for in the CSC Agreement. Plaintiffs further allege that the Carrier Defendants and Neustar "collectively imposed connection, transmission, lease, and review fees upon CSC Lessees that previously did not exist or were far higher than what CSC Lessees would have paid if they were allowed to use ten-digit numbers and standard transmission procedures." *Id.* ¶ 10. These fees are authorized by the CSC Agreement. In sum, the CSC system is created by a web of interwoven agreements between CTIA, Neustar, the Plaintiffs here, the Aggregator Defendants and the Carrier Defendants. The key to all those agreements is the CSC Agreement.

C. Plaintiffs' Arbitration Agreements

As noted, each of the Plaintiffs has accepted the terms of and is subject to same version of the CSC Agreement, as revised in June 2009. *See* Simmons Decl. ¶¶ 4, 9-13.[6] The CSC Agreement contains a broad arbitration agreement that requires arbitration of "[a]ny dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination, nor-renewal of this Agreement or any CSC, refusal to grant new CSCs, or the validity of this Agreement[.]" CSC Agreement ¶ 19. Arbitration must occur in Loudoun County, Virginia under the commercial rules of the American Arbitration Association ("AAA"). *Id.* The CSC

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[6] Certain of the Plaintiffs' CSCs were leased subject to an earlier version of the CSC Agreement, but Plaintiffs each have since accepted the current June 2009 version. Simmons Decl. ¶¶ 7, 9-10. Regardless, the earlier version of the CSC Agreement contained an arbitration provision that was identical in the material respects. *See* Simmons Decl. ¶ 8 and Ex. B.

Agreement's arbitration clause contains no provisions authorizing collective or class treatment of claims. *Id.* The CSC arbitration agreement adopts the substantive law of the Commonwealth of Virginia to "determine [] matters in dispute," and it invokes "the internal procedure and substantive laws of Virginia and the [FAA] [to] govern all questions of arbitral procedure, arbitral review, scope of arbitral authority, and arbitral enforcement." *Id.*

III. ARGUMENT

A. The CSC Agreement's Arbitration Provision Is Presumptively Enforceable.

Pursuant to the FAA, written arbitration agreements are generally "valid, irrevocable and enforceable" as a matter of federal law. 9 U.S.C. § 2. The FAA further provides that a federal district court, "upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3 (emphasis added); *see Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (Section 3 of the FAA mandates arbitration of disputes covered by arbitration agreement).

The Second Circuit has read the statutory language of the FAA and Supreme Court precedent to create a strong presumption in favor of arbitration. In particular, the Circuit has recognized that "the existence of a broad agreement to arbitrate creates a presumption of arbitrability which can only be overcome if it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *WorldCrisa Corp. v. Armstrong*, 129 F.3d 71, 74 (2d Cir. 1997); *accord Syncora Guarantee Inc. v. HSBC Mexico, S.A.*, No. 11 Civ. 5353 (RMB), 2012 WL 955499, at *3 (S.D.N.Y. March 20, 2012). And a common-sense reading of the broad arbitration clause in paragraph 19 of the CSC – extending to "[a]ny dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination, non-renewal of this Agreement or any CSC, refusal to grant new CSCs, or the validity of this Agreement" – not only permits but compels its interpretation to cover Plaintiffs' claims.

This dispute obviously "aris[es] out of or relat[es] to" the CSC Agreement. Binding precedent makes clear that the "any claim" and "arising out of or relating to" language used here create the broadest possible presumption in favor of arbitration. *See, e.g.*, *Moses H. Cone*, 460 U.S. at 5 (characterizing as "broad" an arbitration clause covering "[a]ll claims, disputes and other matters in question arising out of, or relating to, this Contract or the breach thereof"); *Bechtel do Brasil Constuções Ltda. v. UEG Araucária Ltda.*, 638 F.3d 150, 156-58 (2d Cir. 2011) (labeling as broad an arbitration clause requiring arbitration of "[a]ny dispute, controversy, or claim arising out of or relating to the Contract"); *Alghanim*, 2011 WL 5978350, at *12 ("An arbitration clause covering '[a]ny claim or controversy arising out of or relating to th[e] agreement,' is the paradigm of a broad clause.") (citation omitted). Indeed, the entire SAC is a challenge to "the validity" of the CSC Agreement. *See, e.g.*, *JLM Indus., Inc. v. Stolt-Nielsen SA*, 387 F.3d 163, 167, 175 (2d Cir. 2004) (Sherman Act claims fell within scope of arbitration clause because the alleged dispute "'ar[ose] out of'" various shipping charters and "[defendant's] entry into the charters containing allegedly inflated price terms . . . g[a]ve[] rise to the claimed injury"); *In re Currency Conversion Fee Antitrust Litig.*, 265 F. Supp. 2d 385, 410 (S.D.N.Y. 2003) (Sherman Act claims "'touch matters' covered by cardholder agreements" where "Plaintiffs allege a conspiracy to fix currency conversion fee prices" which "appear on plaintiffs' credit card accounts").

Plaintiffs are business entities. They are not unsophisticated, and they presumably had access to counsel. They were presented with the full, clearly articulated terms of the CSC

Agreement in writing, and they willingly and expressly accepted them.[7] In short, there simply is no rationale for departing from the mandate of the FAA to enforce the arbitration agreement here.

B. Pursuant To The CSC Agreement, This Court Should Enforce CTIA's Right To Compel Arbitration Of Plaintiffs' Claims On An Individual Basis.

Defendant CTIA is a party to the CSC Agreement and therefore plainly is entitled to compel each Plaintiff to arbitrate its claims against CTIA on an individual basis. However, the ubiquitous presence of CTIA's agent Neustar in the SAC (in which it is mentioned more than *three dozen times*) coupled with Neustar's conspicuous absence from the caption (it is named as an alleged co-conspirator but not as a defendant) suggests that Plaintiffs may attempt to argue that only Neustar can invoke the CSC Agreement's arbitration provision. As set forth below, that argument would be wholly meritless.[8]

1. Plaintiffs Knew They Were Contracting With CTIA When They Entered Into The CSC Agreement.

As was made clear to Plaintiffs on the Common Short Codes Administration website (www.usshortcodes.com) and in the CSC Agreement itself, CSCs are administered by CTIA. *See* Simmons Decl. ¶ 3; CSC Agreement ¶ 2. CTIA is referred to *more than 20 times* in the CSC Agreement – including over and over again in operative terms with Neustar ("Registry," in the

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[7] The first paragraph of the CSC Agreement states in plain English and all capital letters: "BY CLICKING ON THE "SUBMIT" BUTTON AFTER COMPLETING THE CSC APPLICATION FORM OR BY RENEWING ANY CSC REGISTRATION, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN THIS AGREEMENT AND ALL TERMS, POLICIES, AND GUIDELINES INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT SUBMIT AN APPLICATION FOR A CSC OR RENEW ANY CSC REGISTRATION." *See* Simmons Decl. Ex. A.

[8] Although the CSC Agreement and Neustar are critical to Plaintiffs' conspiracy allegations, arbitration is so clearly required here that there is no reason to address at this time whether Plaintiffs have failed to name a required party in this action. CTIA expressly reserves its rights under Fed. R. Civ. P. 19, in the event that this action proceeds in this Court.

CSC Agreement) as "Registry and CTIA." Indeed, the second paragraph of the CSC Agreement begins with the boldface statement that **"Registry and CTIA reserve the right to modify any of the terms and conditions contained in this Agreement . . . ."** *Id.* at p. 1. And the CSC Agreement expressly states that CTIA, acting in its capacity as the Common Short Code Administrator for participating carriers and other members of the wireless telecommunications industry, "has granted Registry a license to assign CSCs in the manner described in this [CSC] Agreement." *Id.* ¶ 2. Plaintiffs were aware in entering into the CSC Agreement that they were applying for a CSC sublicense from CTIA as the Common Short Code Administrator, with codes assigned and administered by CTIA's agent Neustar. *The CSC Agreement is CTIA's agreement*.

Indeed, it is hornbook agency law that "[w]hen an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal, [] *the principal and the third party are parties to the contract* . . . ." Restatement (Third) of Agency § 6.01 (2012) (emphasis added); *see also id*. § 6.01 cmt. c ("If an agent makes a contract in the name of a principal or a description in the contract is sufficient to identify the principal, the principal is a disclosed principal and is a party to the contract."). Moreover, that precept also is the law of the Commonwealth of Virginia, which governs the CSC Agreement. *See Lambert v. Phillips & Son*, 109 Va. 632, 64 S.E. 945, 946 (1909) ("'Every contract made with an agent in relation to the business of the agency is a contract with the principal, entered into through the instrumentality of the agent, provided the agent acts in the name of the principal. *The party so dealing with the agent is bound to his principal, and the principal and not the agent is bound to the party*.'") (emphasis added and citation omitted); *id*. at 946 ("'When the relation of principal and agent exists in regard to a contract, and is known to the other party to exist, and the principal is disclosed at the time as such, *the contract is the contract of the principal*[.]'") (emphasis added and citation omitted); *Uhrig v. Mitchell*, No. 6614, 1974 WL 176555 (Va. Cir. Ct. May 2, 1974) ("[i]f a contract is made with a known agent acting within the scope of his authority for a disclosed principal, the contract is that of the principal alone"); *cf. Application of Clyde Fashions, Ltd.*, 15 A.D.2d 482 (N.Y. App. Div. 1961) (assignee of disclosed principal would have rights to arbitration under contract entered into by principal's selling agent).

There can be no dispute that CTIA was disclosed on the face of the CSC Agreement as the principal for Neustar, acting as CTIA's agent with actual authority by license, including the express identification in paragraph 2 of the CSC Agreement quoted above. *See* Rest. (3d) Agency § 1.04(a) (2006) ("A principal is disclosed if, when an agent and a third party interact, the third party has notice that the agent is acting for a principal and has notice of the principal's identity."). As such, CTIA is a disclosed principal and a party to the CSC Agreement with full rights thereto, including the right to enforce its arbitration provision. It is thus irrelevant whether CTIA is expressly identified as a signatory to the CSC Agreement. Accordingly, Plaintiffs cannot artfully plead around the broad arbitration provision here merely by omitting CTIA's agent Neustar as a defendant.

2. Even If It Were Not A Party To The CSC Agreement, CTIA Would Be Entitled To Compel Arbitration Under Principles Of Third-Party Beneficiary Doctrine And Equitable Estoppel.

Even assuming, *arguendo*, that CTIA could not enforce the CSC Agreement's arbitration provision as a party or as the principal for Neustar (rights to which it plainly is entitled), it could do so under principles of equitable estoppel and third-party beneficiary rights. *See, e.g., Lismore v. Société Générale Energy Corp.,* No. 11 Civ. 6705, 2012 WL 3577833 (S.D.N.Y. Aug. 17, 2012) (applying Second Circuit's "intertwined-ness" test entitling a non-signatory to enforce an arbitration agreement against a signatory). The factual and legal arguments enunciated in the Carrier Defendants' memorandum in support of their arbitration motion would apply with equal or greater force to CTIA even if it were not a disclosed principal and party to the CSC Agreement, and CTIA adopts those arguments by reference here.

C. Arbitration Must Be Conducted On A Non-Class Basis.

The threshold question of whether Plaintiffs may pursue a class arbitration is one for this Court. *See, e.g.*, *Safra Nat'l Bank of New York v. Penfold Investment Trading, Ltd.*, No. 10 Civ. 8255 (RWS), 2011 WL 1672467, at *3 (S.D.N.Y. Apr. 20, 2011) ("[T]he availability of class arbitration is a gateway issue to be decided by the courts."). As the Supreme Court has recently admonished, "silence on the issue of class-action arbitration" is not a legitimate basis from which to infer "an implicit agreement to authorize class-action arbitration." *Stolt-Nielsen,* 130 S. Ct. 1758. Because the CSC does not authorize class arbitration, the answer to whether it is available to Plaintiffs is plainly "no."

Furthermore, the CSC Agreement expressly adopts Virginia's state procedural rules to govern the conduct of the arbitration. CSC Agreement ¶ 19. It is well-settled that Virginia does not provide for class proceedings, *see, e.g.*, *Casey v. Merck & Co., Inc.*, 722 S.E.2d 842, 846 (Va. 2012) ("Virginia jurisprudence does not recognize class actions."); *Commonwealth v. Supportkids, Inc.*, 77 Va. Cir. 155, at *5 (Va. Cir. Ct. 2008) ("Virginia is not a class action state."); *Almeter v. Va. Dep't of Taxation*, 53 Va. Cir. 429, at *1 n.1 (Va. Cir. Ct. 2000) ("Class actions are not generally allowed in Virginia."); *Skeen v. Indian Acres Club etc. Inc.*, 27 Va. Cir. 167, at*4 (Va. Cir. Ct. 1992) (rejecting putative class action, citing the "unmistakably clear law of Virginia with regard to class action suits"); *see also* Kent Sinclair & Leigh B. Middleditch, Jr., Virginia Civil Procedure § 3.11 (5th ed. 2003) (Virginia "does *not* have a statute or rule authorizing a 'class action' comparable to such proceedings under Rule 23 of the Federal Rules") (emphasis in original). By adopting Virginia law for "all questions of arbitral procedure, arbitral review, scope of arbitral authority, and arbitral enforcement," the CSC Arbitration Agreement forbids class treatment of claims just as an arbitration provision that contains an explicit class waiver would. The incorporation of Virginia's background state procedural rules thus operates to preclude arbitral class treatment of claims in a manner consistent with both *Stolt-Nielsen* and *Concepcion*. *See Stolt-Nielsen*, 130 S. Ct. at 1768-69; *Concepcion*, 131 S. Ct. at 1750 (citing *Stolt-Nielsen*). This Court should thus stay this action and compel Plaintiffs to arbitrate their claims against Carrier Defendants on an individual basis.

IV. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Court grant its motion to compel Plaintiffs to arbitrate all claims set forth in the Second Consolidated Amended Class Action Complaint on an individual basis, and further that the Court stay this litigation pending the conclusion of such arbitration.

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